

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** CP13-010

**Submitted:** 03/05/2013

**PROJECT DESCRIPTION:**

Conditional Use Permit to allow the operation of an existing public eating establishment (Mariscos Restaurant) until 3:00 a.m. on a 3.34 gross acre site

**LOCATION:**

Southwest corner of Story Road and South King Road (1678 Story Road)

Zoning	CP Commercial Pedestrian
2040 General Plan	Neighborhood/Community Commercial
Council District	7
Annexation Date	January 2, 1957
Historic Resource	No
Specific Plan	No

**Aerial Map**

N  
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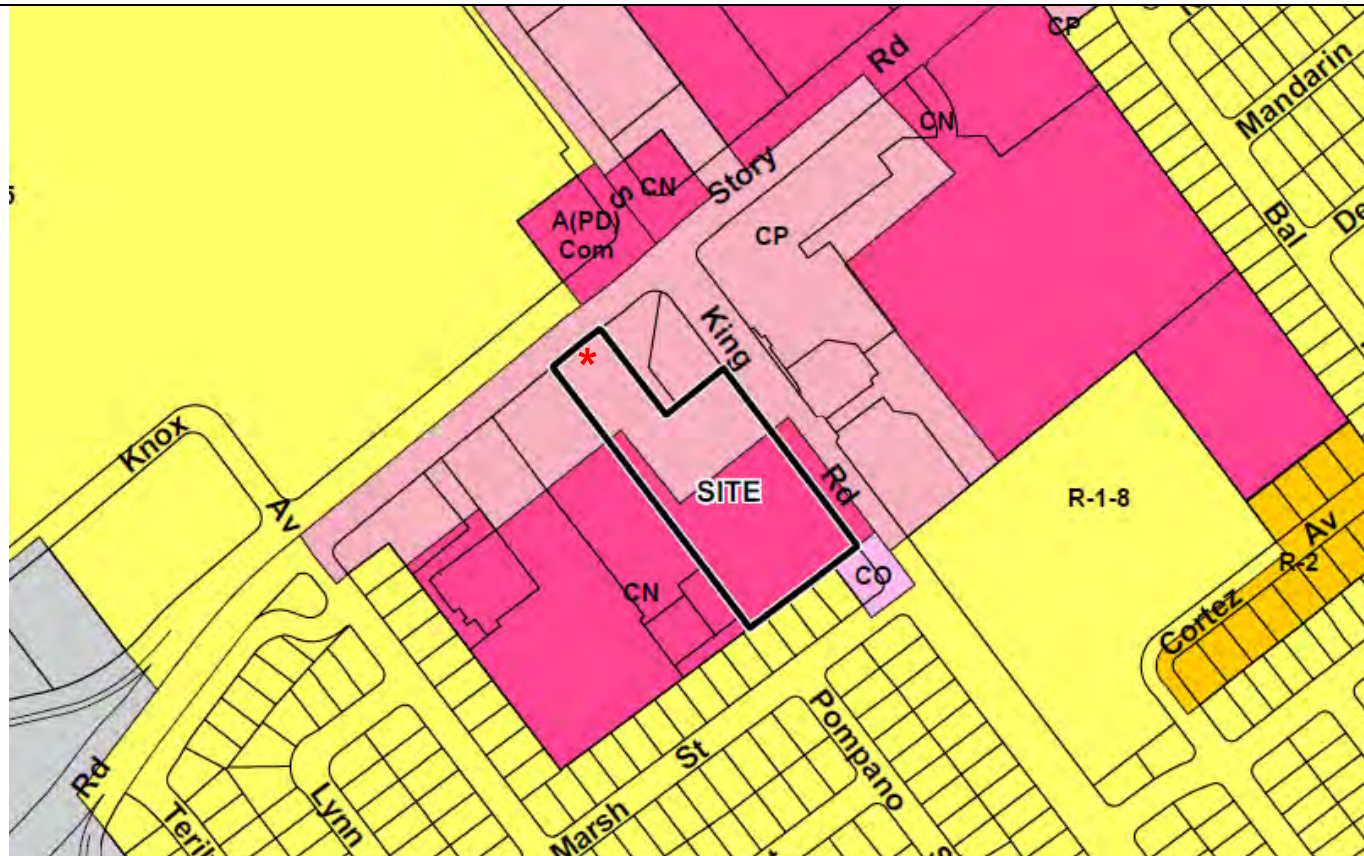
\* Mariscos Restaurant



### GENERAL PLAN



### ZONING



\* Mariscos Restaurant

## **RECOMMENDATION**

Planning staff recommends the Planning Commission approve the proposed Conditional Use Permit for operation of the public eating establishment to 2:00 a.m. on the subject site for the following reasons:

1. The subject Conditional Use Permit is consistent with the Envision San José 2040 General Plan and its goals and policies, specifically:
  - a. The use is consistent with the site's Land Use/Transportation Diagram designation of Neighborhood/Community Commercial in that this designation supports a very broad range of commercial uses.
2. The project conforms to the requirements of the Zoning Ordinance.
3. The project conforms to City Council Policy 6-27 for the Evaluation of 24-Hour Uses.
4. The proposed project conforms to the requirements of CEQA.

## **BACKGROUND & DESCRIPTION**

On March 5, 2013, the applicant, Mariscos Restaurant, requested a Conditional Use Permit to operate an existing public eating establishment during late-night (after-midnight) hours between midnight and 3:00 a.m. Since November 30, 1984, the Zoning Ordinance has required that all commercial uses in Commercial Zoning Districts operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit.

### **Site and Surrounding Uses**

The subject restaurant occupies an approximately 3,000 square foot tenant space in the Tropicana Shopping Center, a four building commercial center located at the southern corner of Story Road and South King Road. The other Tropicana Shopping Center buildings and associated parking surround the subject building to the northeast, southwest, and south. Surrounding land uses of the Tropicana Shopping Center include Prusch Park and a gas station to the northwest across Story Road, a commercial center across South King Road to the northeast, residences to the south, and commercial and residential uses to the southwest.

The applicant has requested a Conditional Use Permit to allow late night operation of the public eating establishment until 3:00 a.m. daily. Mariscos Restaurant is a full service restaurant serving beer and wine only when accompanied by a food order. The applicant is not proposing amplified music or expanded entertainment uses. No change in use or any changes to the exterior façade of the building are proposed.

## **ANALYSIS**

The project was analyzed with respect to conformance with the following: 1) Envision San José 2040 General Plan; 2) Zoning Ordinance; 3) City Council Policy 6-27 for the Evaluation of 24-Hour Uses; and 4) California Environmental Quality Act (CEQA).

## **Envision San José 2040 General Plan Conformance**

The site is designated Neighborhood Community/Commercial on the Envision San Jose General Plan Land Use/Transportation Diagram. The site is also within the Story Road Neighborhood Business District.

The proposal is consistent with the Neighborhood/Community Commercial designation, which supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas. The project also furthers the following goals and policies of the General Plan:

1. *Goal Land Use – 5 Neighborhood Serving Commercial: Locate viable neighborhood-serving commercial uses throughout the City in order to stimulate economic development, create complete neighborhoods, and minimize vehicle miles traveled.*

The project is located within an existing commercial area and within an established Neighborhood Business District. The proposed project would provide a use to serve local communities and thus potentially would minimize vehicle miles traveled.

2. *Policy Land Use – 5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.*

The proposed use is a ground-floor restaurant establishment in the commercially- and pedestrian-active Story Road Neighborhood Business District area with a concentration of like uses.

## **Zoning Ordinance**

Public eating establishments are a permitted use in the CP Commercial Pedestrian Zoning District. The Zoning Ordinance requires that all commercial uses in Commercial Zoning Districts operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit.

### *Parking*

Parking is shared amongst the entire Tropicana Shopping Center. This shared parking agreement was formalized by a Special Use Permit (File No. SP07-042). The parking requirement for shopping centers of this type is required at a rate of one parking space per 225 square feet of floor area. The center is approximately 145,468 square feet and provides 640 parking spaces, which meets the parking requirement.

## **City Council Policy 6-27: Evaluation of 24-Hour Uses**

City Council Policy 6-27: Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses.

### *Area Use Compatibility*

The Policy states that “twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area.” As discussed below in the “Use Separation” and “Police Issues” section in more detail, the proposed use would not be detrimental to the nearby residential or other surrounding areas.

### *Use Separation*

The Policy states that generally, 24-hour uses should not be located within 300 feet of any property residentially zoned, planned, or used. It continues, however, to state that the separation may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on intensity of use, location of other buildings and physical features, neighborhood input, or other relevant criteria. The closest residentially used property is to the southeast of the subject parcel; however, it is approximately 620 feet from the subject tenant space. Prusch Park to the northwest of the subject site is residentially zoned, but is separated by Story Road, a major six lane thoroughfare.

The proposed sit-down restaurant, unlike nightclubs and drive-through restaurant uses, tends to be less problematic when in close proximity to residential uses, as discussed in the Policy. Furthermore, intervening streets and existing commercial structures separate the subject tenant space from the residential areas, thereby compensating for a full 300-foot separation. Given the characteristics and location of the proposed late-night use of the restaurant, it is unlikely that any noise from the proposed use will be audible or distinguishable at the closest residential property line. The applicant does have an existing Type 41 permit for on-sale beer and wine from the Department of Alcoholic Beverage Control to allow the on-sale consumption of alcoholic beverages only as an incidental use to the public eating establishment.

### *Outdoor Activities*

No outdoor activities associated with the restaurant, other than truck deliveries, maintenance, and garbage collection, are currently proposed or permitted in conformance with the policy.

### *Police Issues*

The Policy states that, “crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses”. In a memo dated April 2, 2014, the Police Department indicated that the project site is within San Jose Police Beat C2 and reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index. In addition, the Police Memo finds that the census tract the project is in is not unduly concentrated with ABC licenses for on-sale retail.

The San Jose Police Department is neutral to the issuance of the Conditional Use Permit with the following conditions:

1. **Additional Permits.** The operator shall obtain and maintain all applicable permits from other agencies required per the San José Municipal Code.
2. **Hours of Operation.** Hours of operation to cease at 2:00 a.m., daily. Full kitchen service and full menu service shall be offered during all hours of operation.
3. **Entertainment.** There shall be no entertainment (as defined by Title 6 of the San Jose Municipal Code) at the restaurant unless a Public Entertainment Permit is granted.

### *Restroom Facilities*

Interior restroom facilities within the restaurant remain open and available during the late night business hours in conformance with the policy.

### *Noise*

The Zoning Ordinance requires that the noise level abutting the residential property line not exceed 55 decibels. Given the proposed use as a public eating establishment, and the separation between it and the nearest residential uses as discussed above, it is unlikely that noise from the proposed use will be audible or distinguishable from the nearby residential uses.

### *Cleaning and Maintenance*

No cleaning and maintenance of outdoor areas which utilizes mechanical blowers, vacuums, or other noise generating equipment is permitted between the hours of 10:00 p.m. and 7:00 a.m. in conformance with the Policy.

### *Operations Plan*

Conditions of approval have been incorporated into the draft Resolution to mitigate potential impacts of the proposed late night use. Litter control, Police issues, lighting, and exterior maintenance are addressed. As noted in the attached Operations Plan, Tropicana Shopping Center is managing security issues by installing a new high definition security camera system. The Operations Plans states that restaurant management is responsible for contacting the Police Department if security issues arise. The restaurant has security personnel on Friday and Saturday events from 7:00 p.m. to closing.

### *Specific Development Types – Sit Down Restaurants*

The subject restaurant is a “sit down” type restaurant, which the Policy states does not generally exhibit the problems normally associated with “take-out” restaurants because patrons do not remain in their vehicles in the parking lot, and food is consumed within the building with appropriate supervision. Litter is not typically a problem, as food is not served in disposable wrappings or containers. Therefore, potential impacts from littering, loitering, and noise are substantially reduced by the characteristics of the proposed use.

### **California Environmental Quality Act (CEQA)**

Under the provisions of Section 15301(a) (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

### **CONCLUSION**

Based on the above analysis and in accordance with the Police Department’s recommendation, staff recommends that the Planning Commission approve the request for late night use, but only until 2:00 a.m. rather than 3:00 a.m. as the applicant has requested.



**PUBLIC OUTREACH/INTEREST**

A community meeting was held on May 28, 2013 at Hillview Branch Library. A notice was posted on the City's website and sent to property owners and tenants within 500 feet of the subject site. There were four community members in attendance at the meeting who own businesses in the Tropicana Center.

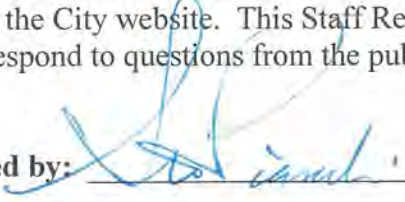
Attendees expressed concern that the proposed project would result in an increase to:

- Vandalism and graffiti
- Loitering and disorderly conduct

The property owner (landlord of Mariscos Restaurant) was also in attendance at the meeting. He stated that the restaurant had never previously caused issues and that he did not expect the change in hours to create new problems.

Additionally, a sign was posted on-site to notify the public of the proposed development, and a notice of this Planning Commission public hearing was mailed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. This Staff Report is also posted on the City's website, and staff has been available to respond to questions from the public.

**Project Manager:** Rebecca Bustos

**Approved by:** 

**Date:** 4-28-14

<b>Owner/Applicant:</b>	<b>Attachments:</b>
Owner: DPJW Group, LP Dennis Fong 1692 Story Road San Jose, California 95122  Applicant: Mariscos Restaurant Heydi Humphers 1678 Story Road San Jose, California 95122  Applicant Contact: Forest Consulting, LLC Richard De La Rosa 10 Jackson Street, Suite 105 Los Gatos, CA 95030	Draft Resolution Operations Plan Police Memo Reduced Plans

## **RESOLUTION NO.**

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing operation of an existing public eating establishment (Mariscos) until 2:00 a.m. on a 3.34 gross acre site located on the southwest corner of Story Road and South King Road (1678 Story Road).

## **FILE NO. CP13-010**

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 5, 2013, an application (File No. CP13-010) was filed for a Conditional Use Permit to allow the operation of an existing public eating establishment (Mariscos) until 2:00 a.m. on a 3.34 gross acre site (hereinafter referred to as "subject property"), situate in the CP Commercial Pedestrian Zoning District, located on the southwest corner of Story Road and South King Road (1678 Story Road) in San José; and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Mariscos," dated **April 23, 2014**. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;



WHEREAS, this Planning Commission has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ AS FOLLOWS:

The Planning Commission determines, concludes and finds as follows:

1. **Site Description and Surrounding Uses.** The subject site is located on the southwest corner of Story Road and South King Road (1678 Story Road) and occupies an approximately 3,000 square foot tenant space in the Tropicana Shopping Center, a four building commercial center. The other Tropicana Shopping Center buildings and associated parking surround the subject building to the northeast, southwest, and south. Surrounding land uses of the Tropicana Shopping Center include Prusch Park and a gas station to the northwest across Story Road, a commercial center across South King Road to the northeast, residences to the south, and commercial and residential uses to the southwest.
2. **Project Description.** The project applicant, Mariscos Restaurant, a full service public eating establishment serving beer and wine (only when accompanied by a food order), proposes late night operation to 2:00 a.m. Anticipated operating hours would be from 10:00 a.m. to 2:00 a.m. No change in use or any changes to the exterior façade of the building are proposed.
3. **General Plan Conformance.** The Project is consistent with the General Plan in that:
  - a. The Project is consistent with the site's Envision San Jose 2040 General Plan designation of Neighborhood/Community Commercial designation. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas.
  - b. Consistent with General Plan Land Use Goal 5, the project is located within an existing commercial area and within an established Neighborhood Business District. The proposed project would provide a use to serve local communities and thus potentially would minimize vehicle miles traveled.
4. **Zoning Code Compliance.** The Project is consistent with the regulations of the Zoning Ordinance in the following manner:
  - a. **Parking Requirement.** Parking is shared amongst the entire Tropicana Shopping Center. This shared parking agreement was formalized by a Special Use Permit (File No. SP07-042). The parking requirement for shopping centers of this type is required at a rate of one parking space per 225 square feet of floor area. The center is approximately 145,468 square feet and provides 640 parking spaces, which meets the parking requirement.
  - b. **Conditional Use.** Late night use and activity of commercial uses between the hours of midnight and 6:00 a.m. may be approved with the issuance of a Conditional Use Permit.

5. **City Council Policy 6-27: Evaluation of 24-Hour Uses.** The Project is consistent with the intent of City Council Policy 6-27: Evaluation of 24-Hour Uses in that:
- a. The Policy states that, “crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses”. In a memo dated April 2, 2014, the Police Department indicated that the project site is within San Jose Police Beat C2 and reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index. In addition, the Police Memo finds that the census tract the project is in is not unduly concentrated with ABC licenses for on-sale retail. The San Jose Police Department is neutral to the issuance of the Conditional Use Permit.
  - b. Per the Operations Plan, Tropicana Shopping Center is managing security issues by installing a new high definition security camera system. The Operations Plans states that restaurant management is responsible for contacting the Police Department if security issues arise. The restaurant has security personnel on Friday and Saturday events from 7:00 p.m. to closing.
6. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.
- a. Under the provisions of 15301(A) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
7. **Conditional Use Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Conditional Use Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
- a. The proposed use at the location requested will not:
    - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
    - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
    - iii. Be detrimental to public health, safety or general welfare; and

*The proposed use is late night operation to 2:00 a.m. of an existing public eating establishment (Mariscos Restaurant). Mariscos is a full service restaurant serving beer and wine only when accompanied by a food order. The restaurant has developed an Operations Plan to address litter, Police issues, exterior maintenance, and security. The restaurant has security personnel on Friday and Saturday events from 7:00 p.m. to closing.*

- b. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

*No changes to the exterior of the existing structure or building footprint are proposed. The Project will meet the parking requirements of the Zoning Code.*

- c. The proposed site is adequately served:
  - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - ii. By other public or private service facilities as are required.

*The proposed use will be located in an existing building that is currently served by existing highways, streets and public or private service facilities. The proposed use is a low intensity use that is not expected to create a demand necessitating expansion of such facilities.*

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This Planning Commission expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San Jose Municipal Code, should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit. (AP1-2013)
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by the Planning Commission, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit. (AP2-2013)

3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority. (AP5-2013)
4. **Conformance to Plans.** The development of the site shall conform to the approved (Name Type of Permit Here) plans entitled, "Mariscos Restaurant" dated April 22, 2014, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes. (AP6-2013)
5. **Operations Plan.** The facility shall operate in conformance with the management plan entitled *Mariscos Restaurant 1678 Story Road San Jose, CA 95122* on file with the Planning Division.
6. **Hours of Operation.** Hours of operation shall be until 2:00 a.m. daily.
7. **Food Service.** Food service shall be available at all hours of operation.
8. **Lighting.** Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Light levels of 1.5 or greater foot-candles average illumination at ground surface are encouraged. Twenty-four-hour uses shall install additional parking lot lighting in the "Designated Parking Area" and such lighting may be other than low pressure sodium unless otherwise permitted per the City Outdoor Lighting Policy, as amended. (SU11-2013)
9. **Cleaning and Maintenance.** Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. (SU12-2013)
10. **Litter Control.** The applicant shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site. (SU13-2013)
11. **Police Issues.** The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug and other police problems which may arise from the operation between 12:00 midnight and 2:00 a.m. (SU15-2013)
12. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City. (AP20-2013)
13. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. (AP21-2013)



14. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above. (AP22-2013)
15. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions. (AP23-2013)
16. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code (AP24-2013).
17. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping. (AP25-2013)
18. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set. (AP26-2013)
19. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground. (AP27-2013)
20. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction. (AP29-2014)
21. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage. (AP30-2013)
22. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment. (AP31-2013)
23. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping. (AP34-2013)
24. **Entertainment Permit.** There shall be no public entertainment as defined by Title 6 of the San Jose Municipal Code at the subject establishment unless a Public Entertainment Permit is granted by the City of San Jose Police Department.

**25. Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds: (*FPC1-2013*)

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

**APPROVED** this **7<sup>th</sup> day of May, 2014**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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NORMAN KLINE

Chairperson

ATTEST:

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HARRY FREITAS

Director of Planning, Building & Code Enforcement

Planning Commission Secretary

#### NOTICE TO PARTIES

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

**Mariscos Restaurant**  
**1678 Story Road San Jose, CA 95122**

**Statement of Use**

Mariscos Restaurant, a family Mexican Seafood Restaurant, provides a wide variety of dining in a hub of Latin Shopping and dining. The atmosphere combines well prepared food with video entertainment, showing music videos and sporting events. On the weekends occasional musicians will stroll through the restaurant serenading patrons to beautiful traditional Latin tunes. (Mariachi style)

Located in the recently renovated Tropicana Shopping Center, Mariscos brings color and style all its own. Mariscos can seat up to 116 indoor diners. Patrons are welcome to order beer or wine with their dinner. This restaurant does not have a bar. The restaurant is a wonderful addition to the Latin flavor of the Tropicana Shopping Center and surrounding shopping area.

Mariscos is located at the corners of Story and King Roads, directly across the street from Emma Prusch Farm Park, Mi Pueblo Shopping Center and Plaza de San Jose Shopping Center.

**Size and Capacity:**

Square footage of whole restaurant is approximately 3000. Table seating maximum is 116.

**Current Hours of operation are as follows:**

Monday through Sunday 10 AM to Midnight (C.U.P. application to extend hours to 3 AM.)

**Number of employees:**

Full Time: 1 owner, 1 manager, 2 assist managers/cashiers, 4 cooks, 2 server/hosts

Part Time: 6 servers, 2 security/hosts, 6 servers, 4 cooks, 3 general kitchen helpers

**Current Permits:**

Fire, Health, Business, Sellers, Insurance, ABC Type 41, Entertainment Permits

**Pending Permits:**

Occupancy Permit correction and a request for a Conditional Use Permit to extend operating hours to 3 am Monday through Sunday have been applied for.

**Entrance and Exit Doors:**

At the entrance, one or two hosts and/or security personnel ensure safe capacity of dining patrons and prevent beer and wine products from leaving the premises at anytime.

Host/security patrols the rear exit to ensure patrons exit the front entrance, except in an emergency.

**Dining Area:**

29 tables with 4 chairs each are located in the dining area. Tables and chairs are moveable to accommodate larger parties.

Beer and/or wine orders shall not be provided without an accompanying food order.

If beer or wine is ordered, it's the server's responsibility to check IDs. If in the unlikely case that a patron appears to be intoxicated, it is the responsibility of the server to inform the manager, assistant manager or security. At that time, no additional alcoholic will be served to that patron or others in his or her party. Host will assist patron in obtaining transportation if alone.

Should a patron or other persons harm or attempt to harm anyone in or about the premises the employee has inform owner, manager, assistant manager or security of the incident for reporting immediately to 911. The same shall be done for someone in distress.

Restrooms shall be checked by host or security personnel on a regular basis to insure safety and cleanliness.

**New Security Camera System**

The Tropicana Shopping Center owners have committed to provide a "state of the art" parking lot and common area surveillance system. The system has been reviewed by the San Jose Police Department Crime Prevention Specialist, Officer Kevin Mank, badge #2796 and overviewed by a team headed by Cpt. Knox with coordination from Council member Madison Nguyen's office.



This high definition system can provide police with facial recognition quality digital images and can capture license plate numbers across the parking lot, day or night, glare or no glare. Data transmitted to data center via fiber optics.

Cameras to be mounted from parking lot light poles and buildings.

Installation of the system is to be completed in approximately 90 days at a cost of nearly \$100,000.

### **Mitigation Management Plan**

As described earlier in this document, any disturbance or situation that jeopardizes the welfare of patrons and/or employees shall require supervisor to call 911.

- **Litter/Exterior Clean up**  
Problems with litter and/or exterior clean up is minimal, but if a situation arises, both Mariscos employees and shopping center cleanup crew will deal with issues in short order.
- **Parking and Lighting**  
Because the majority of adjacent business close by 9 PM adequate parking for patrons. Lighting in common areas and parking areas was approved by Planning Department when pad building B was built.
- **Police Issues**  
State of the art surveillance cameras will be accessible to shopping center management and security, as well as SJ Police Department 24/7. Video and identification pictures shall be made available to police at request from shopping center management. In addition shopping center security patrols throughout the night and early morning. Should any disturbance occur during business hours, personnel are to immediately report to the manager/acting manager. Manager /acting manager has the responsibility to call 911 in the absence of a manager/acting manager any employee will call 911.
- **Mariscos has part time security personnel on weekend nights, when the restaurant is busiest. Friday and Saturday from 7 to closing. Additional security is provided by on premises indoor security cameras which copy to a hidden hard drive.**

# Memorandum

**TO:** Rebecca Bustos  
Planning Department

**FROM:** Ofc. Mike Epp #3048  
San Jose Police Vice Unit

**SUBJECT:** Mariscos  
1678 Story Rd.  
CP13-010

**DATE:** April 2, 2014

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Approved

Date

---

I have received your request for input regarding Mariscos, located at 1678 Story Rd. San Jose, Ca. This is a proposed Conditional Use Permit to allow after-midnight use to an existing full service restaurant, Mariscos, until 3 a.m.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is currently in the East Valley/680 Communities Strong Neighborhood Initiative area.

1678 Story Rd is in San Jose Police Beat C2. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

### Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
C2 (2013)	389	202	591	No
City Average	333	171	505	

Department of Alcohol Beverage Control (ABC) records indicate that 1678 Story Rd. is in census tract 5034.01. Pursuant to B&P Section 23958.4 (a)(2), the ratio of on-sale retail licenses population in census tract 5034.01 **does not** exceed the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

**Authorized and Current ABC Licenses in Census Tract 5034.01**

Census Tract	Authorized ABC Licenses as of May 2012		Current ABC Licenses as of April 2, 2014		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5034.01	6	2	6	1	No	No

The San Jose Police Department is **neutral** to the issuance Conditional Use Permit to allow after-midnight use to an existing full service restaurant, Mariscos, with the following conditions:

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Additional Permits.** The operator shall obtain and maintain all applicable permits from other agencies required per the San José Municipal Code including but not limited to required permits from the San Jose Police Department, a license from the State of California Department of Alcoholic Beverage Control (ABC) and Fire Department conditions.
2. **Hours of Operation.** Hours of operation to cease at **2:00 a.m.**, daily. Full kitchen service and full menu service shall be offered during all hours of operation.
3. **Entertainment.** There shall be no entertainment (as defined by Title 6 of the San Jose Muni Code) at the restaurant unless a Public Entertainment Permit is granted.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Mike Epp #3048  
Administrative Officer  
Special Investigations/Vice

**Project Description**

**Name of Project:** Mariscos Restaurant - C. U. P. Request

Mariscos, an existing Mexican seafood food “sit down restaurant” is requesting a Conditional Use Permit to operate to 3 AM.

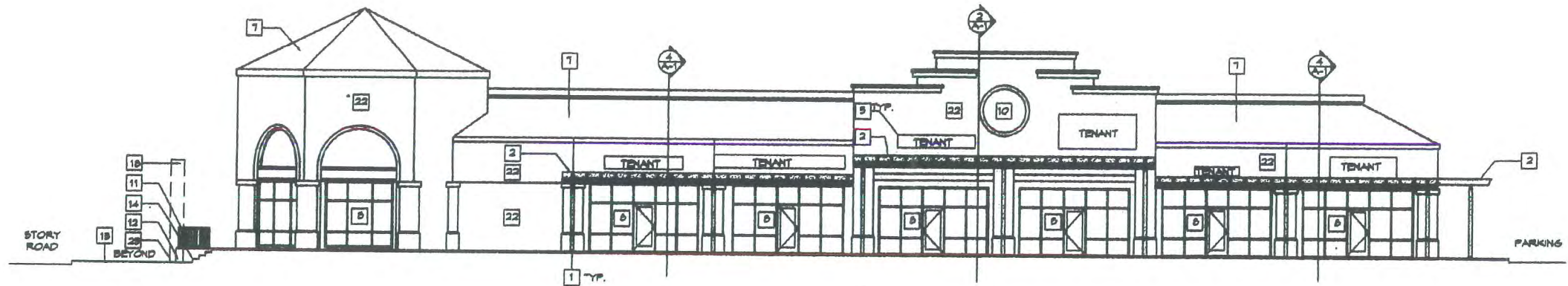
**Project Manager:** Richard E. De La Rosa  
Forest Consulting, LLC  
10 Jackson Street Suite 105  
Los Gatos, CA 95030  
(408) 828-1983  
redelarosa@yahoo.com

**Owner:** Heydi Humphers  
Mariscos Restaurant  
1678 Story Road  
San Jose, CA 95122  
(408) 824-8150  
rivieranayarita@me.com

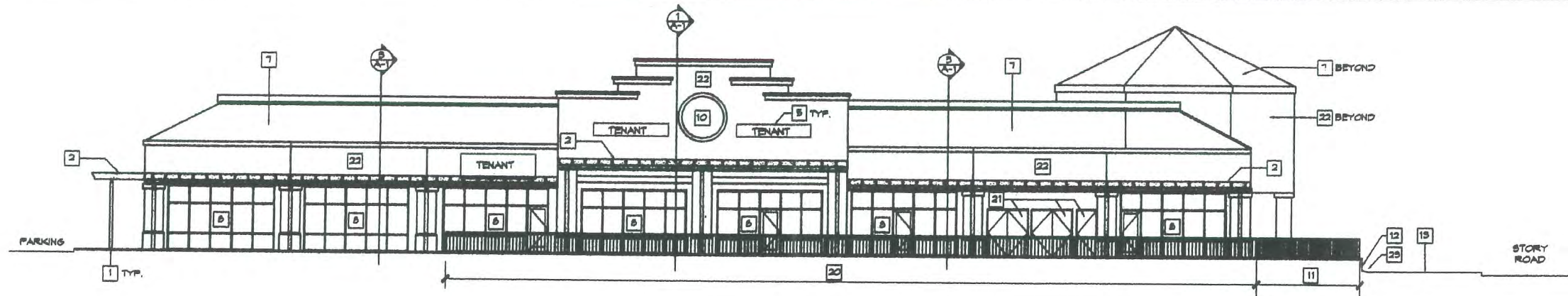
**Table of Contents**

- 1. Elevations for Tropicana Shopping Center – Pad Building B
- 2. Mariscos Restaurant Floor Plan
- 3. Floor Plan – Seating
- 4. Visual Overview of Tropicana Shopping Center
- 5. Aerial View of Tropicana Shopping Center
- 6. Outdoor Color Photos of Mariscos Restaurant
- 7. Indoor Color Photos of Mariscos Restaurant

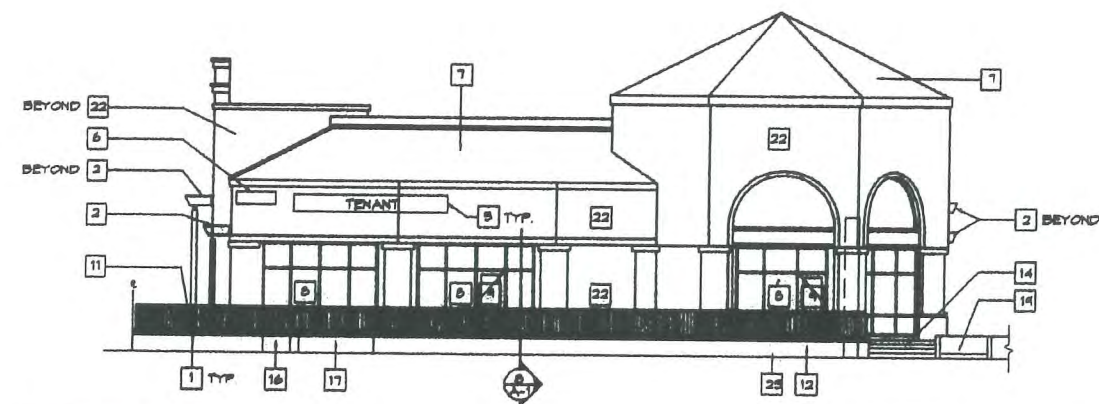




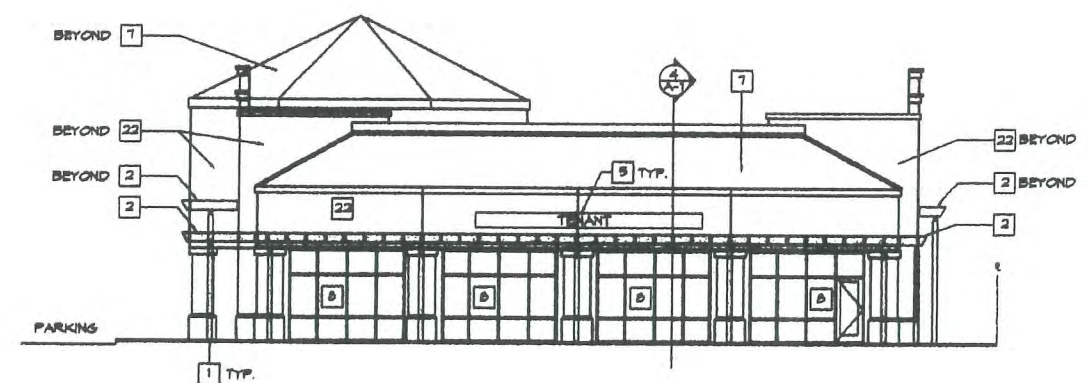
**1 WEST ELEVATION**  
1/8" = 1'-0"



**2 EAST ELEVATION**  
1/8" = 1'-0"



**3 NORTH ELEVATION**  
1/8" = 1'-0"



**4 SOUTH ELEVATION**  
1/8" = 1'-0"

- |  |  |
|--|--|
| 1. NEW PAINTED STEEL TRELLIS POST                                      | 15. EXISTING DRIVEWAY TO REMAIN  |
| 2. NEW PAINTED STEEL TRELLIS WITH VISTERIA OR OTHER VINES TRAINED OVER | 16. EXISTING TRANSFORMER TO REMAIN   |
| 3. NEW PAINTED METAL SLOPED AWNING, COLOR T.B.D.                       | 17. EXISTING BACKFLOW PREVENTOR TO REMAIN  |
| 4. NEW TENANT SIGNAGE  | 18. EXISTING UTILITY SUPPORT POLE TO REMAIN  |
| 5. EXISTING TENANT SIGNAGE TO REMAIN                                   | 19. EXISTING RAMP TO REMAIN  |
| 6. NEW ADDRESS NUMBERS   | 20. EXISTING RAILING TO REMAIN   |
| 7. EXISTING TILE ROOF TO REMAIN  | 21. EXISTING DOOR TO REMAIN  |
| 8. EXISTING STOREFRONT WINDOW/DOOR TO REMAIN                           | 22. EXISTING CEMENT PLASTER WALL TO REMAIN   |
| 9. NEW STOREFRONT DOOR TO MATCH EXISTING                               | 23. NEW 12" WIDE CORRUGATED PLANT STRIP FOR ORNAMENTAL VINES TO GROW UP LOW WALL AND OVER RAIL |
| 10. NEW GLASS TILE MOSAIC  |  |
| 11. NEW RAILING  |  |
| 12. NEW LOW WALL   |  |
| 13. EXISTING SIDEWALK TO REMAIN  |  |
| 14. EXISTING STEPS TO REMAIN   |  |

**5 GENERAL NOTES**

2004.12.18 BLDG. DEPT. SUBMITTAL BK  
2010.03.23 PLAN CHECK COMMENTS JH  
2010.10.11 OWNER REVISIONS JH



1905 PARK AVE, SUITE 210  
SAN JOSE, CA 95126  
408.244.7477 FAX  
408.244.7000 PHONE

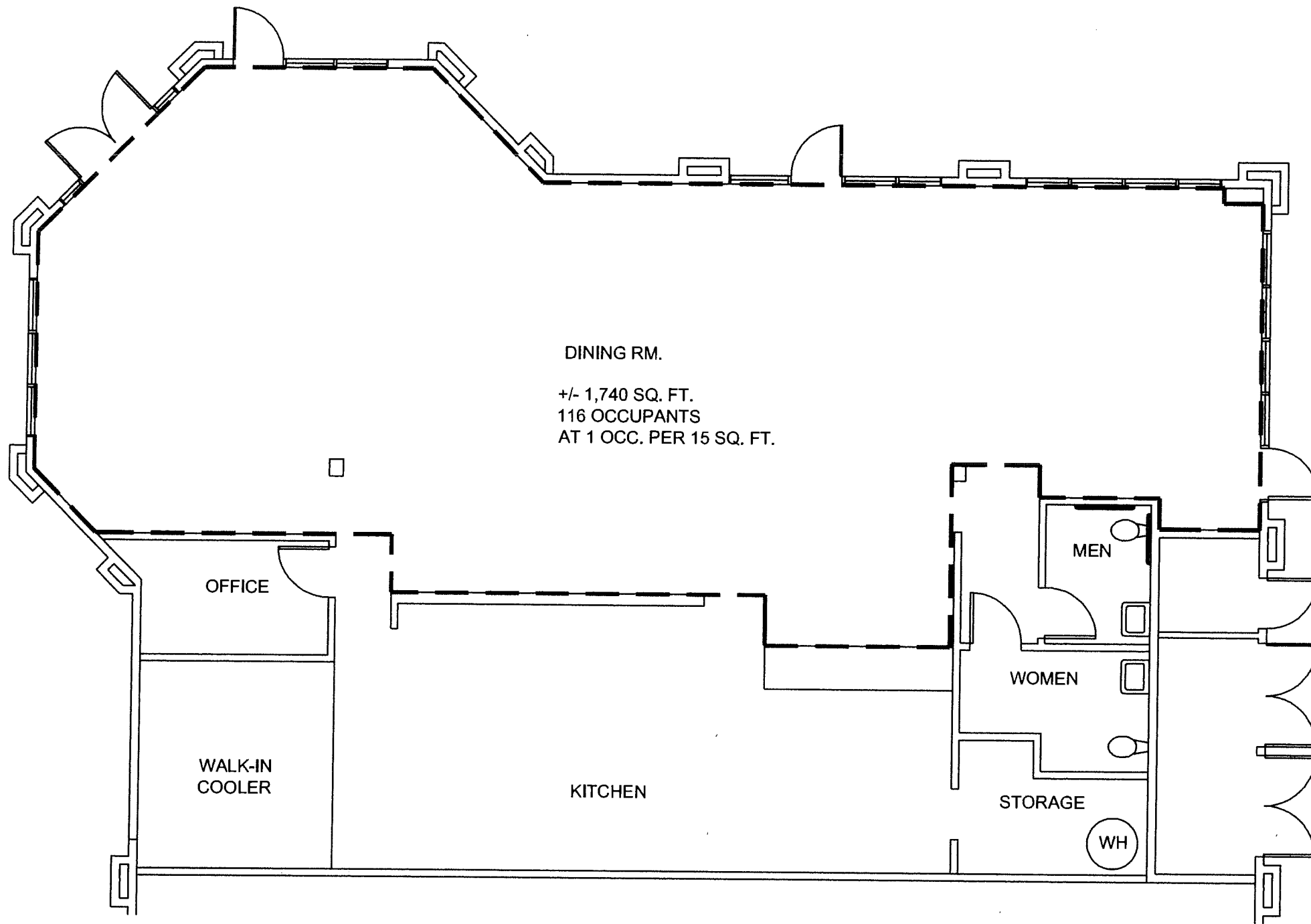
## TROPICANA CENTER PAD BUILDING B

STORY ROAD  
SAN JOSE, CA



PROJECT NAME: TROPICANA CENTER  
ARCHITECT: TROPICANA CENTER  
PROJECT NUMBER: 00.01  
DATE: 2004.01  
DRAWN BY: JH

TRUE NORTH  
A-3  
4 OF 6  
ARCHITECTURAL SHEET  
PLOT NAME: T



DINING RM.  
+/- 1,740 SQ. FT.  
116 OCCUPANTS  
AT 1 OCC. PER 15 SQ. FT.

OFFICE

WALK-IN  
COOLER

KITCHEN

MEN

WOMEN

STORAGE

WH

PROJECT DATA:  
AREA OF TENANT SPACE: +/- 2,825 SQ. FT.  
DINING AREA: +/- 1,740 SQ. FT.  
CONSTRUCTION TYPE: V-N, SPRINKLERED  
OCCUPANCY: A-2 (RESTAURANT)  
# OF STORIES: ONE

PLUMBING FIXTURES REQUIRED:  
58 TOTAL OCCUPANTS: 29 MEN, 29 WOMEN  
CALCULATED AT 1:30 PER CPC CHAPTER 4, TABLE A

FIXTURES REQUIRED PER CPC TABLE 4-1:  
MEN: 1 TOILET, 1 LAVATORY  
WOMEN: 1 TOILET, 1 LAVATORY  
DRINKING FOUNTAINS: NO REQUIREMENT

NO.	DATE	ISSUES AND REVISIONS



1905 PARK AVE, SUITE 210  
SAN JOSE, CA 95  
408.244.7000 PHONE  
408.244.7477 FAX

MARISCOS  
RESTAURANT

1678 STORY ROAD  
SAN JOSE, CA 95122

FLOOR PLAN  
1/8"=1'-0"

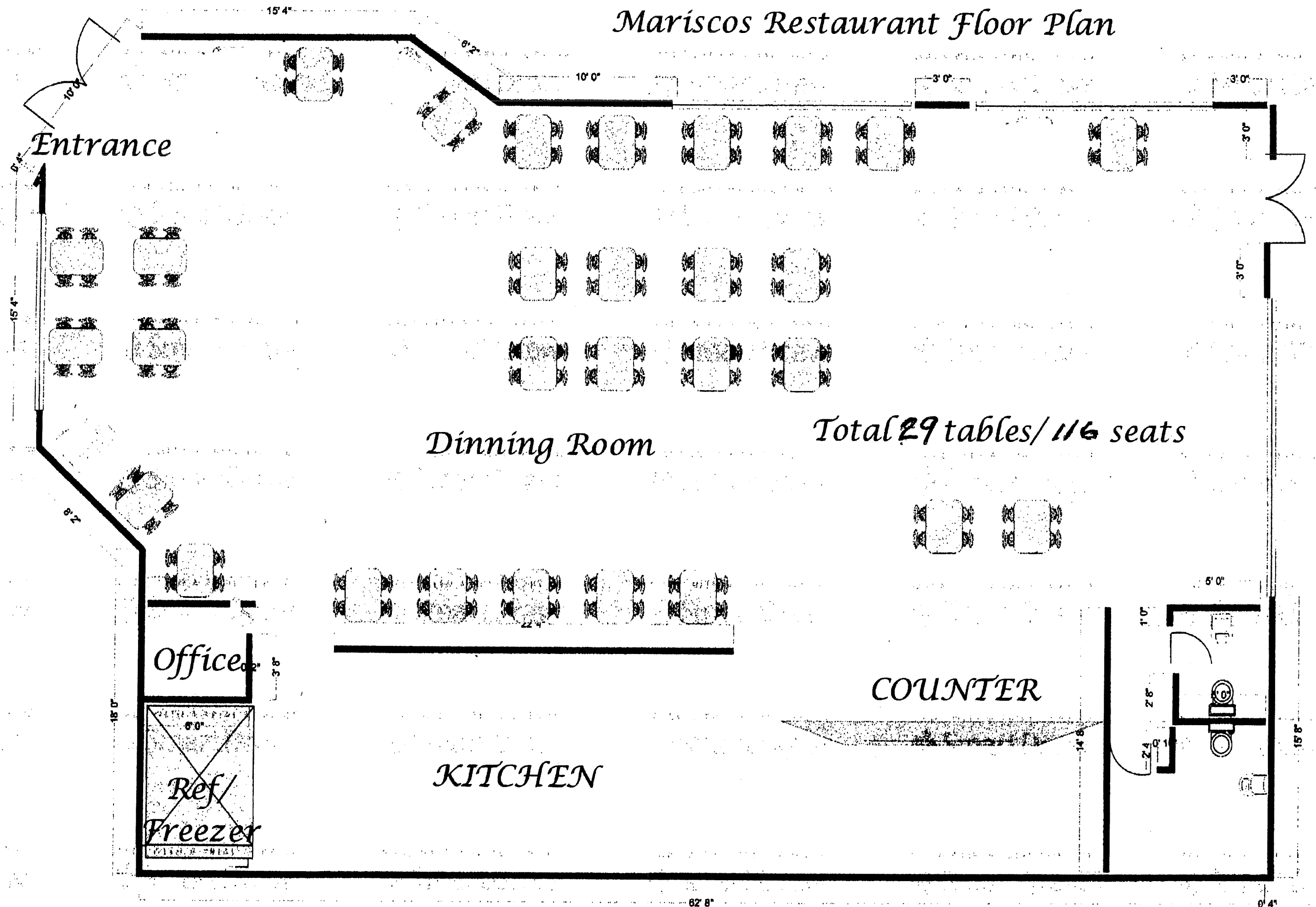
FLOOR PLAN

PROJECT NAME:	MARISCOS
PROJECT NUMBER:	
BY:	
DESIGNED:	
DATE:	
SCALE:	

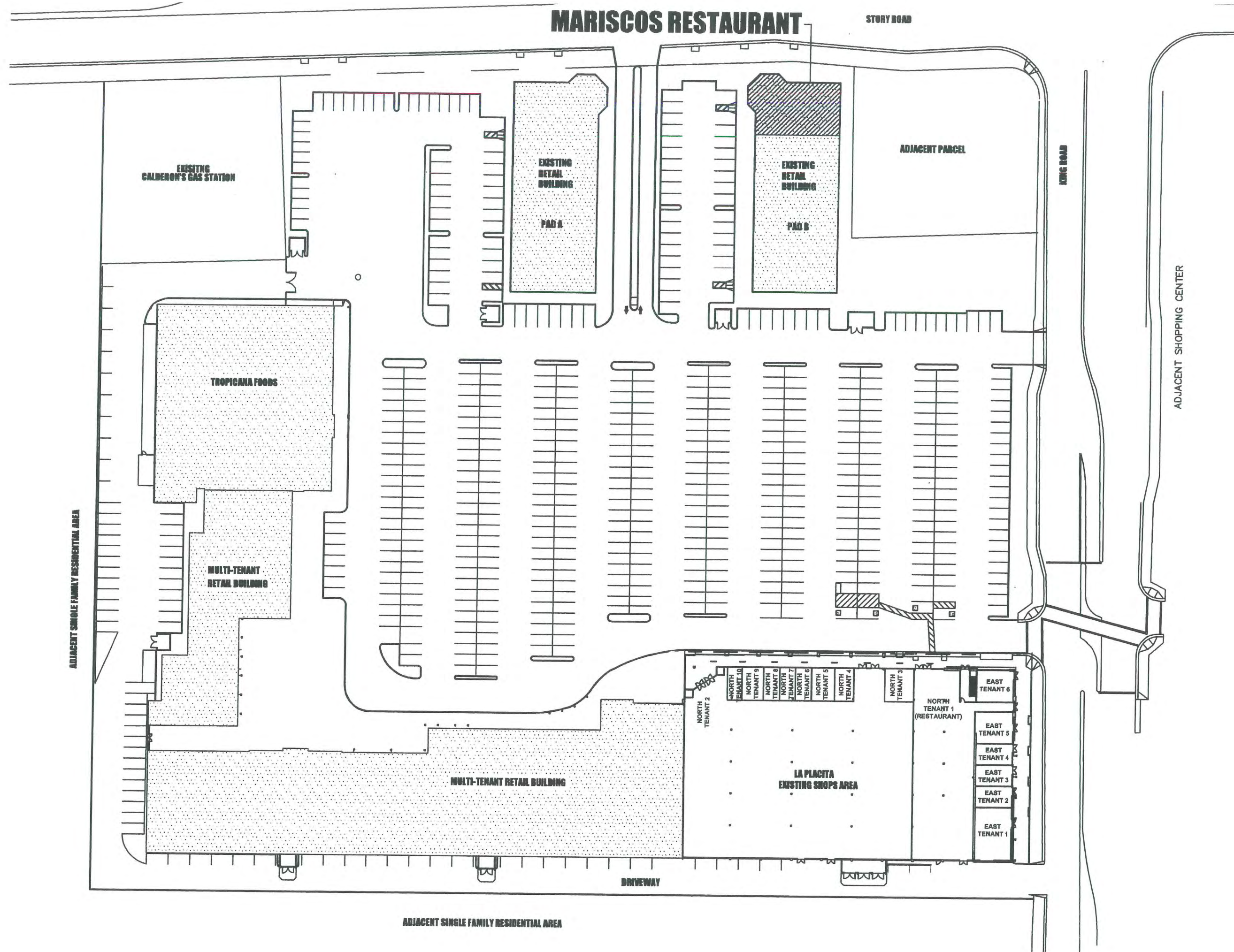


SHEET:

# Mariscos Restaurant Floor Plan







# MARISCOS RESTAURANT

STORY ROAD

ADJACENT PARCEL

LONG ROAD

ADJACENT SHOPPING CENTER

EXISTING  
CALDERON'S GAS STATION

EXISTING  
RETAIL  
BUILDING

PAD A

EXISTING  
RETAIL  
BUILDING

PAD B

TROPICANA FOODS

MULTI-TENANT  
RETAIL BUILDING

MULTI-TENANT RETAIL BUILDING

LA PLACITA  
EXISTING SHOPS AREA

NORTH  
TENANT 2

NORTH  
TENANT 10

NORTH  
TENANT 9

NORTH  
TENANT 8

NORTH  
TENANT 7

NORTH  
TENANT 6

NORTH  
TENANT 5

NORTH  
TENANT 4

NORTH  
TENANT 3

NORTH  
TENANT 1  
(RESTAURANT)

EAST  
TENANT 6

EAST  
TENANT 5

EAST  
TENANT 4

EAST  
TENANT 3

EAST  
TENANT 2

EAST  
TENANT 1

ADJACENT SINGLE FAMILY RESIDENTIAL AREA

ADJACENT SINGLE FAMILY RESIDENTIAL AREA

DRIVEWAY

NO.	DATE	ISSUES AND REVISIONS



1905 PARK AVE, SUITE 210  
SAN JOSE, CA 95  
408.244.7000 PHONE  
408.244.7477 FAX

## MARISCOS RESTAURANT

1678 STORY ROAD  
SAN JOSE, CA 95122

MARISCOS REPRESENTATIVE:  
RICHARD E. DE LA ROSA  
FOREST CONSULTING, LLC  
10 JACKSON STREET #105  
LOS GATOS, CA 95030  
408 828-1983

### TITLE SHEET

PROJECT NAME: MARISCOS  
PROJECT NUMBER:  
BY:  
REVIEWER:  
DATE:  
SCALE:



SHEET:







